IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 240 OF 2005

Narendra Singh Ratansingh Chhadah ... Appellant

V/s

Shri Bhagirath Chhabildas Ponda ... Respondent

Mr. P.M. Chakurkar for the appellant.

Mr. Ajitkumar C. Shah & M.B. Baadkar for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 25TH AUGUST, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Palghar, dated 6.1.2005, dismissing the appeal of the appellant and confirming the judgment and order passed by the Civil Judge, Jr.Divn., Dahanu decreeing the suit of the plaintiff for possession of the suit property to the extent of 33 gunthas from land of Survey No. 2/4/A of village Ashagad, Tal. Dahanu, Dist. Thane, and for consequential reliefs.

2. I have heard the learned counsel for both parties.

Perused the record.

3. The plaintiff filed the suit for possession of the suit property from the defendant. He had come with the case that the suit property was leased to the defendant and the property of survey No.2-A Hissa No.4 admeasuring 33 gunthas at village Ashagad, Tal. Dahanu is owned by him which is now part of Gat No.37. According to the plaintiff, out the said property, 33 gunthas of land was leased to the defendant in March, 1970. The lease deed dated 16.7.1970 was executed for the period of 5 years from 1.3.70 to 28.2.1975 at the yearly rent of Rs.1000/-. The lease was renewed from time to time. It was lastly renewed for a period of 3 years i.e. from March, 1990 to February, 1993 on yearly rent of Rs.4000/-. On expiry of lease, it was incumbent upon the defendant to deliver the vacant and peaceful possession of the land after removing the construction made by him on the lease land, to the plaintiff. However, the defendant did not deliver the possession of the said leased land inspite of calling upon to do so. Hence the suit came to be filed.

4. Defendant contested the suit inter-alia submitting that the suit was liable to be dismissed for want of

notice contemplated under Sec. 106 of the Transfer of Properties Act (hereinafter referred to as the said Act) as his legal status amended holding over and, therefore, it was protected by virtue of the relevant provisions of the Transfer of Properties Act.

5. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the defendant was in unlawful and unauthorised possession of the property and was entitled for possession of the leased property. It was also held that the notice under Sec. 106 of the said Act was not required and, as such, the suit came to be decreed.

The appeal was carried to the Court of Additional District Judge, Palghar. The learned lower appellate Court Judge, after hearing both parties, adjudicated the appeal concurring with the findings recorded by the Trial Court and dismissed the same. Hence the present appeal.

6. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellant sought to raise the question to the effect that by

virtue of the provision of Sec. 106 of the said Act, the appellant was tenant holding over and, therefore, his possession was protected as the lease was not determined under Sec. 106 of the said Act. However, taking into account the relevant aspects and on perusal of the record, it is seen that it was a lease for a fixed period and, therefore, under Sec.111-A read with Sec.116 of the said Act, it must be held that the lease was expired by influx of time and, therefore, tenant holding over was not entitled to notice under Sec. 106 of the said Act. In support of this submission, the learned counsel for the respondent sought to put reliance on the ruling of the Apex Court in the case of **Sardari Lal vishwa Nath & ors., v/s Pritam Singh, reported in A.I.R. 1978 SC 1518,** the ratio of which is squarely applicable to the present case.

In the result, I hold that both the Courts below have concurrently recorded the legal and correct findings to the effect that the appellant is not entitled to any protection of the relevant provisions of the Transfer of Properties Act and, as such, the appeal has no merit and, therefore, stands dismissed with no order as to costs.

C. c. expedited.

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